

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11900

BERKELEY VENTURES II, LLC,

Plaintiff-Appellee,

versus

SIONIC MOBILE CORPORATION,

Defendant-Appellant,

RONALD D. HERMAN,

Defendant.

Appeal from the United States District Court
for the Northern District of Georgia

D.C. Docket No. 1:19-cv-05523-VMC

Before LAGOA, BRASHER, and ABUDU, Circuit Judges.

BY THE COURT:

On June 8, 2023, Sionic Mobile Corporation (“Sionic”) filed a notice of appeal of the district court’s December 16, 2022, order and final judgment and its May 9, 2023, denial of Sionic’s Rule 60(b) motion for relief from judgment. Berkeley Ventures II, LLC moves to partially dismiss this appeal as to the December 16, 2022, order and final judgment.

Sionic’s notice of appeal is timely to bring up for review the district court’s May 9, 2023, order. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). However, it is untimely to bring up for review the district court’s December 16, 2022, order and judgment, as Sionic concedes. The statutory time period required Sionic to file its notice of appeal by January 17, 2023, which was the first day after 30 days had passed that was not a weekend or a holiday. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a)(1)(C). Sionic’s Rule 60(b) motion did not toll the time to appeal because it was not filed by January 13, 2023, 28 days after the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A); Fed. R. Civ. P. 59(e), 60(b) *Advanced Estimating Sys., Inc. v. Riney*, 77 F.3d 1322, 1323 (11th Cir. 1996).

Accordingly, the motion to partially dismiss this appeal is GRANTED and Sionic’s appeal of the district court’s December 16, 2022, order and judgment is DISMISSED. This appeal may

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Order of the Court

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proceed only as to the denial of relief under Rule 60(b). *See Am. Bankers Ins. Co. of Fla. v. Nw. Nat. Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999).